

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 484 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHAMMAD HANIF HUSSAINBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR TS NANAVATI for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/08/98

ORAL JUDGEMENT

#. Heard learned advocate Mr.T.S.Nanavati appearing for the petitioner.

#. Rule. Learned Additional Public Prosecutor Mr. D. N. Patel has waived the rule. By consent of parties, this petition is taken for final hearing.

#. The petitioner has challenged the order of

learned Additional Sessions Judge, Court No.16, Ahmedabad passed in the proceeding of Criminal Revision Application No.212 of 1998 on 24-8-1998. That vide impugned order, learned Additional Sessions Judge has modified the order passed by the learned Metropolitan Magistrate, Court No.11, Ahmedabad dated 18-8-1998 in the proceeding of inquiry arising from offences registered No.136/98 at Gaekwad Haveli Police Station, Ahmedabad. That vide said order, learned Metropolitan Magistrate had refused the remand of custody of the petitioner and directed the petitioner to remain present before the Investigation Officer of Crime Branch Police Station between 9.00 AM to 6.00 PM from 20-8-1998 to 24-8-1998.

#. It may be noted that vide above stated registration of offences bearing No.136/96 accusation of offences made punishable under Section 328, 366, 376, 420, 506(1) read with Section 114 of IPC was made against the present petitioner and he was arrested during the investigation of the said offences on 12-8-1998. That thereafter as the petitioner had moved bail application against which the Investigation Officer had claimed remand, the above stated order was passed by learned Metropolitan Magistrate, Court No.11, Ahmedabad which was challenged by the State in the proceedings of Criminal Revision Application No.212/98, wherein the impugned order is passed by the learned Additional Sessions Judge, Court No.16, Ahmedabad.

#. Shri T.S.Nanavati, learned advocate appearing for the petitioner has contended that despite contradictory accusation made by the petitioner in the FIR in the context of various other proceedings resorted to by the original informer against the present petitioner, the Metropolitan Magistrate, Court No.11 had rightly directed the petitioner to remain present for interrogation during 9.00 A.M. to 6.00 P.M. before the investigation officer, Crime Branch Police Station, Ahmedabad from 20-8-1998 to 24-8-1998. That though no new facts have been revealed during the said investigation, the learned Additional Sessions Judge has modified the said order and had granted the remand custody of the petitioner to the investigation officer by the Additional Sessions Judge vide impugned order and as such the same is illegal, unjust and arbitrary.

#. The learned APP Mr.D.N. Patel has submitted that in consideration of nature of accusation made against the petitioner and specifically the fact that alleged Video Tap obtained by the petitioner of the original informer is required to be recovered by investigation officer, a

custodial interrogation is necessary and thereby, the learned Additional Sessions Judge has rightly passed the just order granting remand custody of the petitioner to the investigation officer.

#. On earlier occasion, i.e. on 25th August, 1998, when the matter was heard, the learned APP was directed to show the police diary of the investigation officer for the purpose of satisfying the Court that new facts have been revealed which are required to be investigated through custodial interrogation. The police papers which were shown to me didn't disclose any such fact whereby custodial interrogation of the petitioner could be justified. That as per the initial order of learned Metropolitan Magistrate, Court No.11, Ahmedabad, the petitioner had remained present before the investigation officer from 9.00 AM to 6.00 PM in between 20th August to 24th August, 1998, which was sufficient in time and extent for investigation officer to interrogate. Further more, the investigation Officer is not precluded to interrogate the petitioner as and when necessary to verify and cross check the information collected during the further investigation. In the circumstances, in my opinion, the order passed by the learned Additional Sessions Judge, Court No.16, Ahmedabad on 24-8-1998 in the proceedings of Criminal Revision Application No.212 of 1998 modifying order of learned Metropolitan Magistrate, Court No.11, Ahmedabad cannot be upheld and justified.

#. On the basis of above said discussion, the petition is allowed. The impugned order of learned Additional Sessions Judge, Court No.16, Ahmedabad is hereby set aside and quashed. The petitioner shall make himself available as and when required by the investigation officer of Crime Branch Police Station, Ahmedabad. Rule is made absolute accordingly. No order as to costs. Direct Service is permitted.

Date : 28-8-1998 (A.K.Trivedi,J.)

(KPP)